

## Department of State

## § 122.2

technology), for applications usable for the systems in Item 1 or Item 2 (see § 121.1, Category XIII (e) and (k)), for example:

(a) Structural material and coatings specially designed for reduced radar reflectivity;

(b) Coatings, including paints, specially designed for reduced or tailored reflectivity or emissivity in the microwave, infrared or ultraviolet spectra, except when specially used for thermal control of satellites.

(c) Specially designed software or data-bases for analysis of signature reduction.

(d) Specially designed radar cross section measurement systems (see § 121.1, Category XI(a)(3)).

### ITEM 18—CATEGORY II

Devices for use in protecting rocket systems and unmanned air vehicles against nuclear effects (e.g. Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for the systems in Item 1, as follows (see § 121.1, Category IV (c) and (h)):

(a) "Radiation Hardened" "microcircuits" and detectors (see § 121.1, Category XI(c)(3) Note: This commodity has been formally proposed for movement to category XV(e)(2) in the near future).

(b) Radomes designed to withstand a combined thermal shock greater than 1000 cal/sq cm accompanied by a peak over pressure of greater than 50 kPa (7 pounds per square inch) (see § 121.1, Category IV(h)).

### NOTE TO ITEM 18(a)

A detector is defined as a mechanical, electrical, optical or chemical device that automatically identifies and records, or registers a stimulus such as an environmental change in pressure or temperature, an electrical or electromagnetic signal or radiation from a radioactive material. The following pages were removed from the final ITAR for replacement by DDTC's updated version § 6(l) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(l)), as amended. In accordance with this provision, the list of MTCR Annex items shall constitute all items on the U.S. Munitions List in § 121.16.

[58 FR 39287, July 22, 1993, as amended at 71 FR 20539, Apr. 21, 2006]

## PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

Sec.

122.1 Registration requirements.

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122.4 Notification of changes in information furnished by registrants.

122.5 Maintenance of records by registrants.

AUTHORITY: Secs. 2 and 38, Public Law 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311; 1977 Comp. p. 79, 22 U.S.C. 2651a.

SOURCE: 58 FR 39298, July 22, 1993, unless otherwise noted.

### § 122.1 Registration requirements.

(a) Any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the Directorate of Defense Trade Controls. For the purpose of this subchapter, engaging in the business of manufacturing or exporting defense articles or furnishing defense services requires only one occasion of manufacturing or exporting a defense article or furnishing a defense service. Manufacturers who do not engage in exporting must nevertheless register.

(b) *Exemptions.* Registration is not required for:

(1) Officers and employees of the United States Government acting in an official capacity.

(2) Persons whose pertinent business activity is confined to the production of unclassified technical data only.

(3) Persons all of whose manufacturing and export activities are licensed under the Atomic Energy Act of 1954, as amended.

(4) Persons who engage only in the fabrication of articles for experimental or scientific purpose, including research and development.

(c) *Purpose.* Registration is primarily a means to provide the U.S. Government with necessary information on who is involved in certain manufacturing and exporting activities. Registration does not confer any export rights or privileges. It is generally a precondition to the issuance of any license or other approval under this subchapter.

[58 FR 39298, July 22, 1993, as amended at 71 FR 20540, Apr. 21, 2006]

### § 122.2 Submission of registration statement.

(a) *General.* The Department of State Form DS-2032 (Statement of Registration) and the transmittal letter required by paragraph (b) of this section

must be submitted by an intended registrant with a payment by check drawn against the registrant's account, payable to the Department of State of the fee prescribed in § 122.3(a) of this subchapter. Checks must be in U.S. currency, and must be payable through a U.S. financial institution. In addition, the Statement of Registration and transmittal letter must be signed by a senior officer (e.g., Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant also shall submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

(b) *Transmittal letter.* A letter of transmittal, signed by an authorized senior officer of the intended registrant, shall accompany each Statement of Registration.

(1) The letter shall state whether the intended registrant, chief executive officer, president, vice-presidents, other senior officers or officials (e.g. comptroller, treasurer, general counsel) or any member of the board of directors:

(i) Has ever been indicted for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(ii) Is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government.

(2) The letter shall also declare whether the intended registrant is owned or controlled by foreign persons (as defined in § 120.16 of this subchapter). If the intended registrant is owned or controlled by foreign persons, the letter shall also state whether the intended registrant is incorporated or

otherwise authorized to engage in business in the United States.

(c) *Definition.* For purpose of this section, *ownership* means that more than 50 percent of the outstanding voting securities of the firm are owned by one or more foreign persons. *Control* means that one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Control is presumed to exist where foreign persons own 25 percent or more of the outstanding voting securities if no U.S. persons control an equal or larger percentage.

[58 FR 39298, July 22, 1993, as amended at 69 FR 70889, Dec. 8, 2004; 71 FR 20540, Apr. 21, 2006; 73 FR 55440, Sept. 25, 2008]

#### § 122.3 Registration fees.

(a) A person who is required to register must do so on an annual basis upon submission of a completed Form DS-2032, transmittal letter, and payment of a fee as follows:

(1) *Tier 1:* A set fee of \$2,250 per year is required for new registrants or registrants for whom the Directorate of Defense Trade Controls has not reviewed, adjudicated or issued a response to any applications during a 12-month period ending 90 days prior to expiration of the current registration.

(2) *Tier 2:* A set fee of \$2,750 per year is required for registrants for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response to between one and ten applications during a 12-month period ending 90 days prior to expiration of the current registration.

(3) *Tier 3:* The third tier is for registrants for whom the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response to more than ten applications during a 12-month period ending 90 days prior to expiration of the current registration. For this tier, registrants will pay a fee of \$2,750 plus an additional fee based on the number of applications for which the Directorate of Defense Trade Controls has reviewed, adjudicated or issued a response. The additional fee will be determined by multiplying \$250 times the number of applications over